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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 579 of 2023
Reserved on: 18.03.2025
Date of Decision: 08.05.2025.

Hukam Ram ...Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes.

For the Petitioner : Mr. Surya Chauhan, Advocate, for the petitioner.

For the Respondent : Mr. Ajit Sharma, Deputy Advocate General, for the respondent/State.

Rakesh Kainthla, Judge

The present petition is directed against the judgment dated 15.09.2023, passed by learned Additional Sessions Judge, Kullu, H.P. (learned Appellate Court), vide which the judgment and order dated 16.06.2023 passed by learned Judicial Magistrate First Class, District Kullu, H.P. (learned Trial Court) were upheld *(the parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan against the accused before the learned Trial Court for the commission of an offence punishable under Section 406 of the Indian Penal Code (IPC). It was asserted that the informant, Nokh Ram (PW1), made a complaint to the police on 27.09.2011, stating that he was allotted the work of construction of a tank by the IPH Department on 11.09.2009. He could not find the labour and the mason to execute the work. He engaged Hukam Ram as a Mason on 08.07.2011. Hukam Ram offered to execute the work on contract. The informant executed an agreement for constructing a tank for ₹75,000/-. He paid ₹20,000/- on 31.07.2011. He obtained 1000 kgs of iron bars and 50 bags of cement from the IPH Department on 01.08.2011 vide challan Nos 1661 and 1662. These were transported in a jeep bearing registration No. HP65-0107 and a tractor bearing registration No. HP37-8598 to Village Badogi. These were kept inside the room of Sh. Shiv Ram (PW2). The informant handed over the key to accused Hukam Ram with a direction to take care of the material. The work could not be executed for some days due to the rain. The informant visited Village

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Badogi on 20.09.2011. Accused Hukam Ram told the informant that the cement bags and the iron bars were stolen. The informant asked the accused to get the store checked, but the accused replied that the keys were kept by him at home. The informant told the accused that the store was locked, and how a theft could have taken place. He directed Hukam Ram to bring the key. However, Hukam Ram did not bring the key. He also stopped picking up the informant's phone. Parwati Devi (PW3) told the informant that Hukam Ram and Sunder Singh had loaded the iron bars and the cement bags in the vehicle. An entry (Ex.PW1/B) was recorded in the Police Post, Zari. FIR (Ex.PW9/B) was registered in the Police Station. Dhiraj Singh (PW9) conducted the investigation. He visited the spot and prepared the site plan (Ex.PW9/C). The informant produced, tender challans (Ex.PW1/C, Ex. P1 and P2) and an agreement (Ex.PW1/A). These were seized vide Seizure Memo (Ex.PW1/D). The iron bars were seized vide Seizure Memo (Ex.PW1/E). These were handed over on a sapurdari to the informant. Photographs (Ex. D1 to D3) were taken. The statements of witnesses were recorded as per their version.

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After the completion of the investigation, the challan was prepared and presented before the Court.

3. The learned Trial Court charged the accused with the commission of an offence punishable under Section 406 of the IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 09 witnesses to prove its case. Nokh Ram (PW1) is the informant. Shiv Ram (PW2) is the owner of the room where the cement bags and iron bars were kept. Parwati Devi (PW3) is an eyewitness who saw the accused transporting the iron bars and the cement bags. Raj Devender (PW4) is the witness to the recovery. He also proved that the accused had sold the iron bars and cement bags to him. Tilak Raj (PW5) purchased the iron bars and cement bags from the accused. Inder Singh (PW6) proved the entry in the Daily Diary. Brij Bhushan (PW7) is the witness to recovery. Ram Dass (PW8) did not support the prosecution's case. Dhiraj Singh (PW9) conducted the investigation.

5. The accused in his statement recorded under Section 313 of Cr. P.C. denied the prosecution's case in its entirety. He stated that the witnesses connived with each other. His house is

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located towards a different side. No defence was adduced by the accused.

6. Learned Trial Court held that the testimonies of the prosecution's witnesses corroborated each other. It was duly proved on record that the informant had kept iron bars and cement bags in the room taken on rent from Shiv Ram. The keys were handed over to the accused, and the accused was asked to guard the iron bars and cement bags. However, he sold them and thereby committed a criminal breach of trust, hence, the learned Trial Court convicted the accused of an offence punishable under Section 406 of IPC and sentenced him to undergo simple imprisonment for 03 months, pay a fine of ₹1500/- and in default of payment of fine to undergo further simple imprisonment for 15 days for the commission of aforesaid offence.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional District and Sessions Judge, Kullu (learned Appellate Court). Learned Appellate Court concurred with the findings of the learned Trial Court that the accused was entrusted with the keys of the room. He was asked to

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guard the room. However, he sold the iron bars to various persons. This amounted to a criminal breach of trust. Hence, the learned Trial Court had rightly convicted and sentenced the accused. Consequently, the appeal filed by the accused was dismissed.

8. Being aggrieved from the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in appreciating the evidence. The statements of the prosecution witnesses were not in accordance with the story projected by the complainant. Learned Trial Court ignored the cross-examination of the prosecution witnesses. Parwati Devi (PW3) stated that the accused and Sunder Singh used to load the iron bars. However, the prosecution did not array Sunder Singh as an accused. There are material discrepancies in the statements of prosecution witnesses. The benefit of the Probation of Offenders Act was not granted to the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

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9. I have heard Mr. Surya Chauhan, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State.

10. Mr. Surya Chauhan, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the evidence. There was insufficient evidence to show the entrustment. There are various contradictions in the prosecution's story. The statement of eye-witness Parwati Devi showed that iron bars and cement bags were removed by the accused and Sunder Singh. However, Sunder Singh was not arrayed as an accused. This made the prosecution's case highly suspect. The learned Trial Court did not extend the benefit of the Probation of Offenders Act to the accused. He relied upon the judgment of the Punjab and Haryana High Court in ***Nasri Vs. State of Haryana 2023: PHHC: 099408*** in support of his submission.

11. Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the prosecution witnesses consistently supported the prosecution case. It was duly proved on record that the iron bars and cement bags were kept in the room. The key was handed over to the accused. The iron bars and the

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cement bags were found missing. Parwati Devi saw the accused and Sunder Singh taking them away. The circumstances clearly proved the prosecution's case. The benefit of the Probation of Offenders Act could not be granted in the present case, as the offence was committed after due deliberation. Hence, he prayed that the present petition be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an

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> error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings."

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:
>
> > "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial

> discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.
>
> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

15. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. The informant Nokh Ram (PW1) stated that he had engaged the accused as a Contractor to construct the water tank. An agreement (Ex.PW1/A) was executed between the parties for ₹75,000/-. He paid ₹20,000/- to the accused. He handed over 10 quintals of iron bars and cement bags to the accused, which were taken from the IPH Department. These were kept in the room owned by Shiv Ram, and the key was handed over to the accused. He went to the house of the accused and asked him about the execution of the work. The accused revealed that the articles were

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stolen. The informant asked the accused to show the iron bars and cement bags, and the accused replied that he had forgotten the key at home. He peeped into the store but could not find anything. He made enquiries and Parwati Devi revealed that the accused and Sunder Singh used to take the iron bars and cement bags during the night. He reported the matter to the police. Tilak Raj had purchased the iron bars from the accused. He stated in his cross-examination that 10 quintals of iron bars and 50 cement bags were kept in the store. The accused had not taken the iron bars and the cement from the Department. He did not remember the date of issuing cement and iron bars to him. The police seized only 6 quintals of iron bars and could not trace 4 quintals of iron bars. The house of Sunder Singh and Parwati Devi is located at a distance of 30-40 meters from the store. The police visited the spot on 2-3 occasions. The police seized the lock and the key. No money was paid to the accused for guarding the cement and the iron bars because the contract was executed with him. He denied that iron bars and cement bags were not handed over to the accused, and a false case was made against him.

17. Shiv Ram (PW2) supported his version. He stated that he had rented a room to Nokh Ram, Contractor, @ ₹500/- per

month. Iron bars and cement bags were kept in the room. The accused was kept as a guard to look after the iron bars and cement bags. The iron bars and cement bags were stolen. He did not know who had stolen the articles because he was in the hospital. He was permitted to be cross-examined. He stated that he was told by his daughter-in-law about the theft. He denied the previous statement recorded by the police. He stated in his cross-examination by learned counsel for the defence that his room is located at a distance of 2-3 furlongs from the store. He denied that Parwati Devi was with him to take care of him. He denied that the store used to remain open.

18. The statement of this witness corroborates the testimony of the informant regarding the renting of the room and keeping the iron bars and cement bags in the room. The mere fact that he has not deposed about the accused removing the iron bars and cement bags from the room will not make the prosecution's case suspect because he has provided a valid explanation for the same by saying that he was admitted to the hospital at the time of the incident.

19. Parwati Devi (PW3) also supported the prosecution's version. She stated that Nokh Ram, the Contractor, had hired a room in which iron bars and cement bags were kept. Sunder Singh and Hukam Ram were kept as Guards. The key was handed over to Hukam Ram. Nokh Ram made enquiries about the iron bars and cement bags. She told him that iron bars and cement bags were sold by the accused/Hukam Ram, who used to transport them in a vehicle at night. She had seen the accused doing it twice. She stated in her cross-examination that 2-4 persons used to visit the store during the night. She got afraid and did not come out. However, she heard the noises being created by the iron bars.

20. There is nothing in the cross-examination of this witness to show that she is making a false statement. Nothing was suggested to her that she had any motive to depose against the accused. Therefore, learned Courts below had rightly relied upon her testimony.

21. Raj Devender (PW4) stated that he and his brother were sitting on the road. They were getting their house constructed. Hukam Ram came to them and told them that he was a Contractor. He had iron bars and cement bags. He told the accused that he did

not require cement bags but required iron bars. The accused supplied 06 quintals of iron bars to him for ₹21,000/-. He handed over ₹21,000/- to his younger brother, Tilak Raj, who went to Badogi, from where the iron bars were brought. He was not aware of the fact that the iron bars belonged to the State. He produced 6 quintals of iron bars, which were seized by the police. He stated in his cross-examination that the iron bars were not weighed. The matter was settled at ₹24,000/- out of which ₹21,000/- were paid to the accused. No receipt was prepared. He handed over the money to his younger brother, to whom the iron bars were supplied by the accused. He denied that the accused had not sold any iron bars to his younger brother. He denied that he was making a false statement.

22. Tilak Raj (PW5) stated that he and his brother Raj Devender were present at the construction site. The accused revealed that he was constructing a tank. Some iron bars and cement bags were left with him and he would sell them. Raj Devender said that he did not require cement, and only required 6 quintals of iron bars. The matter was settled at ₹21,000/-. He accompanied the accused to the spot. The accused loaded 6 bundles of iron bars into his jeep. He paid ₹21,000/- to the

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accused. The store had iron bars and cement bags. The accused accompanied him to his home and helped in the unloading of the iron bars. He produced the iron bars before the police, and the police seized them. He stated in his cross-examination that one storey of the house was constructed. The house had 6 rooms. The iron bars were transported in the vehicle bearing registration No. HP34B-1863. There was one shed in which the material was kept. The shed was owned by Shiv Chand, whose house is located at a distance. He purchased the iron bars because the accused was offering them cheaply. He denied that the accused had sold any iron bars to him.

23. The statements of these two witnesses corroborate each other. These are corroborated by the iron bars produced by Tilak Raj. These testimonies duly prove that the accused had sold iron bars to them for ₹21,000/-. The accused had not provided any explanation of the sale. Hence, the learned Courts below were justified in holding that the accused had sold iron bars to Raj Devender (PW4).

24. ASI Brij Bhushan (PW7) witnessed the recovery of the iron bars. He stated that iron bars were produced by Tilak Raj and

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Raj Devender in his presence and in presence of Dharam Chand. The police handed them over to the informant. He stated in his cross-examination that no site plan of the place of recovery was prepared. Iron bars were handed over to Nokh Ram. A house consisting of 4-5 rooms was being constructed.

25. There is nothing in his cross-examination to show that he is making a false statement. His testimony materially corroborates the statements of Tilak Raj and Raj Devender regarding the handing over of the iron bars to the police.

26. Thus, it was duly proved on record that the informant, Nokh Ram, had kept the iron bars and the cement bags in the room rented to him by Shiv Ram (PW2). These were found missing. Subsequently, Parwati Devi saw the accused transporting the iron bars and cement bags in the vehicle during the night. The accused had sold the iron bars to Raj Devender (PW4) and Tilak Raj (PW5). The accused did not provide any explanation regarding the sale made by him. Therefore, the learned Courts below had rightly drawn an inference that he had sold the iron bars entrusted to him by the informant.

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27. It was submitted that the remaining iron bars and cement bags were not recovered, and this made the prosecution's case suspect. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***State of H.P. v. Karanvir*, *(2006) 5 SCC 381: (2006) 2 SCC (Cri) 460: 2006 SCC OnLine SC 579*** that the prosecution has to prove the entrustment and not the manner of misappropriation. It was observed at page 385:

> 10. Mrs K. Sarada Devi learned counsel appearing on behalf of the respondent would submit that no material was brought on record by the prosecution to show as to how the respondent had utilised the amount. In our opinion, the same was not necessary. In view of the admitted fact, we are of the opinion that it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. The learned Judge had rejected the said defence.
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> 11. The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor.

28. This position was reiterated in the ***Mustafikhan Versus State of Maharashtra (2007) 1 SCC 623*** wherein it was held: -

> 9. In order to sustain a conviction under Section 409 IPC, the prosecution is required to prove that (a) the accused, a public servant, was entrusted with the property of which he

> has a duty bound to account for, (b) the accused had misappropriated the property.
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> 10. Where the entrustment is admitted by the accused, it is for him to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged.
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> 11. The above position was reiterated in ***Jagat Narayan Jha v. State of Bihar (1995 (Supp) 4 SCC 518)***.
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> 12. It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance against the accused. Although the onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it would be difficult for the prosecution to prove the actual mode and manner of misappropriation and in such a case the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused. In the instant case, there is no dispute about the entrustment.

29. In the present case, it was proved that the iron bars and cement bags were entrusted to the accused, and they were found missing, hence, the burden would shift upon the accused to prove what happened to them. The accused did not provide any explanation, and the learned Courts below had rightly held the accused guilty of the criminal breach of trust.

30. It was submitted that the learned Courts below erred in not extending the benefit of the Probation of Offenders Act to the

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accused. Reliance was placed upon the judgment of the Punjab and Haryana High Court in ***Nasri's*** case (supra). This submission cannot be accepted. Punjab and Haryana High Court itself held in ***Lilu Ram Vs. State of Haryana 1998 SCC OnLine P&H 1255*** that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of the criminal breach of trust. It was observed:

> "**6.** Faced with this position, the learned counsel for the petitioner submitted that the alleged embezzlement took place in the year 1983. A case was registered against the petitioner in the year 1984. He faced the ordeal of investigation for about three years. He was challenged in the year 1987. He remained on trial before the Magistrate for ten years. The Magistrate eventually convicted him and sentenced him. He went in appeal to the Court of Session. He remained in appeal to the Court of Session for 1 1/4 years. He has, thus, suffered the vagaries of a criminal trial for 14 years. Mental pain and agony to which the accused was put in the wake of a grave charge under Section 409 IPC has shaken him altogether. Right to speedy trial is the fundamental right of the accused which flows from Article 21 of the Constitution. If the Court is not able to assure the accused a speedy trial, the Court should show him some consideration towards sentence. In support of this submission, learned counsel for the petitioner drew my attention to ***Braham Dass v. State of Himachal Pradesh, 1988 (2) RCR (Criminal) 184, Pardeep Kumar v. The State (U.T. Chandigarh), 1994 Criminal Cases 58, Veer Singh Chauhan v. The State (Delhi), 1994 (2) Chandigarh Criminal Cases 253, Jamna Lal v. State of Madhya Pradesh, 1995 Prevention of Adulteration Cases 78, Manjit Singh v. State of Punjab, 1993 RCR (Criminal) 363 and Mahavir v. State of Haryana, 1997 (3) RCR 649***. In this case, the release of the petitioner on probation of good conduct is not conducive to

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> justice. Expectations of the society from the courts will stand shattered if an accused who is proved to have embezzled panchayat funds to the tune of Rs. 13,766.92 Paise in the year 1984, when the value of money was quite high, is released on probation of good conduct. Criminals have certain rights while being dealt with by the courts. At the same time, society has just expectations from the courts that the sentence imposed upon them will be commensurate with the gravity of the offence and the sentence imposed will act as a deterrent to others against the commission of crime. I am alive to the fact that in these days when retributive theory is almost alien in the modern penology where stress should be more on reformation and reclamation of the offenders, I will strike a mean while passing this sentence. While passing this sentence, I am not inclined towards attaching any importance to the retributive or deterrent aspect of the sentence, but will focus my attention on the reformative aspect of the sentence. I think, in this case, six months R.I and a fine of Rs. 4000/- will adequately meet the ends of justice. It is ordered accordingly. In default of payment of the fine, further R.I. for one month.

31. A similar view was taken in ***Gulzar Singh v. State of Haryana, 1999 SCC OnLine P&H 1292,*** wherein it was observed that:

> "**12.** For the reasons given above, I am of the opinion that there is no reason to tinker with the order of the learned Additional Sessions Judge, Jagadhari, maintaining the conviction of the accused and the sentence imposed. Faced with this position, learned counsel for the petitioner submitted that the petitioner should have been released on probation of good conduct, as if he were not released on probation of good conduct, his family would be rendered destitute and exposed to starvation. The accused cannot be released on probation of good conduct as the amount proved to have been embezzled by him runs into lakhs. The accused has shown scant regard for probity and good

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> conduct. Probity and good conduct are the pillars on which the foundation of an edifice of trust rests. Keeping, however, in view that the accused is a familied man and if he is sentenced to a longer term of imprisonment, his family will remain exposed to destitution and starvation for a long period, I think some leniency should be shown to him in the matter of sentence. So, the sentence imposed upon him is reduced to RI for 2 years in both cases. The sentence of fine shall remain intact in both cases. In default, he shall undergo further RI for 6 months. Substantive sentences passed in both these cases shall run concurrently with each other."

32. Therefore, the benefit of the Probation of Offenders Act could not have been granted to the accused. The accused committed the offence after due deliberation. He was entrusted with the iron bars and cement bags. He sold iron bars and could not account for the cement bags and the rest of the iron bars. Granting the benefit of the Probation of Offenders Act to a person guilty of committing the criminal breach of trust would encourage people to misappropriate the property of other persons, and the safety of the property entrusted to other persons cannot be ensured. This would affect the trust upon which a civil society is based. Therefore, the prayer of learned counsel for the petitioner/accused that the benefit of the Probation of Offenders Act be granted to the accused is not acceptable.

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33. Learned Trial Court sentenced the accused to undergo simple imprisonment for 3 months and pay a fine of ₹1500/-. This sentence is not excessive. The accused had committed criminal breach of trust of the articles worth ₹65,000/-. He was only asked to pay ₹1500/-, which is nothing as compared to the amount misappropriated by him. The sentence of 3 months can hardly be said to be deterrent in nature. Therefore, no interference is required with the sentence imposed by the learned Trial Court.

34. No other point was urged.

35. In view of the above, the present petition fails and the same is dismissed, so also pending miscellaneous application(s), if any.

36. Registry is directed to transmit the records of the learned Courts below forthwith along with copy of judgment passed by this Court.

(Rakesh Kainthla)
Judge

8th May, 2025
(Rupsi)